IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 133 OF 1997
AND
WRIT PETITION NO.59 OF 1999

WRIT PETITION NO. 133 OF 1997

Shri Michael D'Costa,
son of late Antonio
Caetano D'Costa, major,
married, Indian National,
resident of Madel Grande,
Margao, Salcete, Goa. ... Petitioner.

versus

1. Government of Goa,
   through the Secretary,
   Planning & Development,
   Government of Goa,
   Secretariat,
   Panaji, Goa.

2. Chief Town Planner,
   Office of Town & Country
   Planning Department,
   Government of Goa,
   Goa Medical College
   Building, D.B.Bandodkar Marg,
   Campal, Panaji, Goa.

3. Margao Municipal Council, a
   Municipal Council constituted
   and incorporated under the
   Goa, Daman & Diu Municipalities
   Act, 1968 through its
   Chief Officer, with its Office
   at Margao Municipal Building,
   Margao, Goa.

4. South Goa Planning & Development
   Authority. a Planning & Develop-
   ment Authority constituted
   under the Town & Country
   Planning Act, 1974, having its
   office at Datta Prasad Building,
   Pajifond, Margao, Goa, through
   its Member Secretary.

5. Shri Morad Ahmed, major,
   married, Indian National,
   Member Secretary of the
   Respondent No.4, having
   office at Datta Prasad Building,
   Pajifond, Margao, Goa.

6. Shri Austin Rebello, son of
late Dr.Rogociano Rebello,
major, bachelor, businessman,
residing at Biumsa, Cuncolim,
Salcete, Goa.

7. Royal Homes & Real Estates,
a Partnership Firm of
Builders & Contractors,
having office at Shriram
Building, Opp. Multi Purpose
School, Gogol, Margao, Goa,
through its Partner
Mrs.Lilian D'Costa, major,
married, wife of
Leoff D'Costa, residing at
1st floor Shriram Building,
Opp. Multi Purpose School,
Gogol, Margao, Goa. ... Respondents.

Mr. S. G. Dessai, Senior Advocate with Mr. Shivan Dessai, Advocate for the Petitioner.

Mr. A. N. S. Nadkarni, Advocate General with Mr. H. R. Bharne, Government Advocate for Respondent Nos.1 and 2.

Mr. A. N. S. Nadkarni, Advocate General with Mr. H. D. Naik, Advocate for Respondent No.4.

Mr. M. S. Sonak, Advocate for Respondent Nos.6 and 7.

Mr. E. P. Lobo, Advocate for Respondent No.3.

WRIT PETITION NO. 59 OF 1999

1. Smt. Imelda Menezes,
major, housewife,
resident of Maddel
Grande, Margao, Goa.

2. Smt. Bessy J. Cardoso,
major, housewife,
resident of Maddel
Grande, Margao, Goa.

3. Shri Ashok Korgaonkar,
major, Civil Engineer,
resident of Fatorda,
Margao, Goa. ... Petitioners.

versus

1. State of Goa, through the
Secretary, Planning &
Development, Secretariat,

Panaji, Goa.

2. Chief Town Planner,
Office of the Town & Country
Planning Department,
Government of Goa, Old Goa
Medical College complex,
Dayanand Bandodkar Marg,
Campal, Panaji, Goa.

3. Margao Municipal Council,
A Municipality constituted
under the Goa, Daman & Diu
Municipalities Act, 1968,
through its Chief Officer,
with his office at Municipal
Building, Margao, Goa.

4. South Goa Planning & Deve-
lopment Authority, through
its Member Secretary, a
Planning & Development
Authority constituted under
the Town & Country Planning
Act 1974 having its office
at Datta Prasad Building,
Pajifond, Goa.

5. Shri Austin Rebello, son of
Rogaciano Rebello, major,
businessman, Biumsa,
Cuncolim, Salcete, Goa. ... Respondents.

Mr. S. D. Lotlikar, Senior Advocate with Mr. A. D. Bhobe, Advocate for the Petitioner.

Mr. A. N. S. Nadkarni, Advocate General with Mr. H. D. Naik, Additional Government Advocate for Respondent Nos.1, 2 and 4.

Mr. E. P. Lobo, Advocate for Respondent No.3.

Mr. M. S. Sonak, Advocate for Respondent No.5.

CORAM: F. I. REBELLO &
P. V. HARDAS, JJ.

DATED: 11TH JUNE, 2003.

ORAL JUDGMENT(PER F.I.REBELLO,J.)

Both these Petitions are being disposed of by a common Order as identical questions of law are involved

and the facts are more or less similar.

2. Writ Petition No.133 of 1997 is filed by the Petitioner who has a property on which there exists a residential house constructed in the year 1987 and which property is behind the property of Respondent No.6 and developed by Respondent No.7. The property of the Petitioner is surveyed under Chalta No.5 of P.T. Sheet No.102 and admeasures 850 sq.metres. The property of Respondent No.6 is surveyed under Chalta No.12 of P.T. Sheet No.102 and according to the Petitioner admeasures about 900 sq. metres. According to the Petitioner when he constructed his bungalow there was no Outline Development Plan framed under provisions of the Goa, Daman and Diu Town and Country Planning Act, 1974. It is not necessary to advert to various proceedings suffice it to say it is the Petitioner's case that Respondent No.6 applied for development of his plot. That plot according to the Petitioner has a length of 63 metres in east direction and 13 metres in north direction and admeasures 900 sq. metres. In September, 1996, the Petitioner found that Respondent No.7 had barricaded the area. Pursuant to that, they have lodged various complaints amongst others to Respondent No.4 which is the Planning Authority of the area where the plot of Respondent No.6 is situated. As the Respondent No.6 commenced construction which according to the Petitioner could not

have been legally sanctioned, the Petitioner filed a Writ Petition which was numbered as Writ Petition No.408/96. That Petition came to be disposed of on 30th November, 1996, in view of what is set out in the said Order. The Order sets out that Respondent No.4 herein had issued a notice to Respondent No.6 and, therefore, Respondent No.4 was acting on the complaint filed by the Petitioner and as such there was no inaction on the part of Respondent No.4. Thereafter, the Petitioner received some communications from Respondent Nos.4 and 5. The Petitioner was called for discussion on the ground that Respondent No.4 desired to finalise the matter. It is the Petitioner's contention that a compromise was suggested which the Petitioner did not accept. It is the contention of the Petitioner further that a suggestion was made that the width of the road be reduced to 8 metres. That suggestion for reduction from 15 metres to 8 metres was to enable Respondent No.6 to continue the construction. That meeting took place on 27th January, 1997. The Petitioner called on Respondent Nos. 4 and 5 not to reduce the width to 8 metres from 15 metres. The Petitioner also filed objections dated 3rd March, 1997 under the Town and Country Planning Act. The Petitioner was also informed that Respondent No.5 informed Respondent No.6 that Respondent No.4 had resolved that Respondent No.6 shall develop the road of 8 metres width before further commencement of development so as to

provide access to the plot of the Petitioner. As the Respondent No.6 was going on with the construction, the Petitioner filed the present Petition i.e. Writ Petition No.133 of 1997.

3. In Writ Petition No.59 of 1999, Petitioner No.1 is the owner of a plot of land on which he has constructed a bungalow and multi-storeyed building which plot is surveyed under Chalta No.14 of P.T. Sheet No.102. Similarly, Petitioner No.2 is a owner in possession of land surveyed under Chalta No.12 of P.T. Sheet No.71 in which residential bungalow has been constructed. Petitioner No.3 is a Civil Engineer who has entered into an agreement with the owners for construction of multi- storeyed building.

It is their contention that vide letter dated 11th November, 1996, the Joint Secretary to the Government of Goa, Respondent No.2, the Chief Town Planner had directed Respondent No.4 to follow the draft Outline Development Plan for Margao Planning area which provided for a 15 metres wide road instead of 10 metres at the site, as had been prepared by the Authority and duly approved by the Town & Country Planning Board vide letter dated 8th November, 1996. It is further set out that by a public notice dated 31st January, 1997, Respondent No.4 invited the attention of the members of

the Public, Architects and Engineers that a Draft Outline Plan of Margao approved by the Government has been adopted with effect from 15th January, 1997 and that all applications received will be processed with reference to the Outline Development Plan 1997. It is next contended that on 31st January, 1997, a Public notice was published by Respondent No.4 in the local newspapers, inviting objections from the public to the Draft Outline Development Plan under Section 35 of the Town and Country Planning Act, 1974. The public notice was also published in the Government Gazette. One Roberto Cardoso by an application of 9th January, 1997, had applied for construction of a multi-storeyed building in his plot abutting the said road and the same was approved by Respondent No.4 on the basis of 15 metres wide road as per the new Outline Development Plan. It is, however, pointed out that on 11th February, 1998, Respondent No.4 granted Development permission to Respondent No.5 for construction of a multi- storeyed building in Chalta No.12 of P.T. Sheet No.102 of Margao on the footing that the road abutting the plot is 8 metres wide. Some times in June, 1998, it is the case of the Petitioner that the Respondent commenced construction and on 16th November, 1998 they made representation objecting to the Development permission. On 27th November, 1998, they made representation to the Chief Officer and thereafter the present Petition.

It is submitted that the permission granted is mala fide and arbitrary. It is submitted that the Development Plan has been granted by considering a proposed road on the West of construction plot which is yet to come up, which is impermissible in terms of definition of corner plot as given in Section 2(46)(a) of Planning and Development Authority(Development Plan) Regulations 1989 which shall hereinafter be referred to as the Regulations 1989. It is submitted that a corner plot means a plot at the junction of two or more streets, which means two or more existing streets. In the present case, the construction plot is not a corner plot and has a rear and therefore a rear setback has to be kept.

4. Respondent No.7 in Writ Petition No.133/1997 has filed his reply. It is pointed out that the Petition filed by the Petitioners was to harass and cause loss to them. A similar Petition being Writ Petition No. 408/96 has been filed in this Court when identical reliefs were prayed for. This Court came to dismiss the Petition by Order dated 30th November, 1996. To set the records at this juncture, it may be pointed out, that the Petition was dismissed, as the Court found that the public authorities were seized of the action and were not lethargic in discharging their duties. It is then denied that permission granted to them is mala fide and in exercise of powers. The plan filed by the Petitioner it

is contended does not conform to the existing reality or location. On the plan one sketch is shown approved for development, which is 4.50 metres from the existing road and another 3 metres from the existing road. The Petitioner Michael D'Costa has constructed his bungalow in the year 1987 and that plot is behind the plot of these Respondents. Dealing with the Outline Development Plan, it is pointed out that before the plan becomes final, a public notice of the preparation of the O.D.P. has to be given. Such a notice has not been given. It is then set out that on the North side there is a 3 metres road running from East to West which is a private road made by the owner of the adjacent plot Maria Andrade. On the Eastern side of the plot there is a 6 metres access road joining the plot to the main road. It is set out that now the Government has given public notice with regard to Outline Development Plan and has called for objections, if any, from the public. These Respondents have made representations with regard to the width of the road, as the same adversely affects them. The said representation which is on record is addressed to the Member Secretary and signed by Austin Rebello and three others. In the said objections, it is pointed out that there is already a 6 metres existing road and various constructions, bungalows and buildings have come up on the O.D.P. road and as such, construction of such O.D.P. road will not be possible at all. It is then

pointed out that by a letter of 20th February, 1997, the Member Secretary has granted permission by calling on them to construct and develop an 8 metres wide road before any further commencement of development in the property. The rest of the contentions have been denied.

5. Both the Petitions are being disposed of by common Order as the issue involved in both the Petitions are the same. Before adverting to the other averments and the replies by the Respondents, the two submissions which will have to be answered may be now set out as under:-

1. The permission granted to develop in Chalta No.12 of P.T. Sheet No.102 was based on 8 metres wide road is illegal, inasmuch as the same is contrary to the existing Outline Development Plan of 10 metres wide road and proposed Outline Plan showing 15 metres wide road.

2. Permission has been granted on the basis that the plot is a corner plot, just to accommodate the licence holder.

6. A rejoinder was filed by the Petitioner in Writ Petition No.133/1997. Therein, it is set out that the existing O.D.P. as approved has not beem taken into consideration, which shows a 10 metres wide road and as per the proposed O.D.P it is a 15 metres wide road. It

is set out that once the O.D.P is in force, the Planning Authority cannot grant permission to develop contrary to the O.D.P. It is also pointed out that a survey plan of the plot shows that it has throughout only 13 metres width.

There are other Affidavits filed on behalf of the Petitioners and Respondent Nos.6 and 7. At this stage, I may only address myself to the Additional Affidavit filed on 18th November, 2002, by Respondent Nos.6 and 7 in Writ Petition No.133/1997. In paragraph 5, it has been set out that flats have been sold to the various parties and their addresses are shown. Similarly in respect of shops and garages. This was done after occupancy certificate was issued by the authority. It is set out that the Petition is liable to be dismissed on the ground of non-joinder of necessary parties. Reference is made to the orders of this Court which will be adverted to later on. It is specifically set out that what the Petitioner is doing is to ventilate a personal grievance. It is pointed out that revised plans were approved on the basis of an 8 metres wide road which has been maintained. On the date of the Affidavit, it is pointed out that the O.D.P plan has been finalised and in the O.D.P as approved is shown an 8 metres road. It is, therefore, contended that nothing survives in the Petition. It is stated that in the vicinity, there was

another case where approved plan has been granted on the basis of an 8 metres wide road. A decision has been taken by the authorities after being satisfied, to keep an 8 metres wide road and once that has been done, they were bound to grant permission. It is also pointed out that in addition to showing the 8 metres wide road, a 3 metre front set-back has also been maintained. The other contentions which have been raised have been answered. In so far as plot area is concerned, it is contended that the area of the original plot was 900 sq. metres of which 330 sq. metres has been reserved for road widening and an area of 150 sq. metres has not been considered in view of the judicial proceedings pending in Special Civil Suit No.214/88/A. It is set out that the net effective plot area is 420 sq.metres. The construction has been put up within the provision of the Act, Rules and Regulations.

7. On behalf of Respondent No.4 in Writ Petition No.133/1997, Rajesh Naik, Member Secretary in the Office of the fourth Respondent has filed an Affidavit. Therein reference is made to the Order of this Court dated 26th August,1997. It is pointed out that on the basis of the said Order, Respondent Nos.6 and 7 submitted fresh plans for approval and vide Order dated 11th February, 1998, the authority was pleased to approve the said fresh plans. It is then set out that revised plans are

approved by the authority on the basis of an 8 metres access road. A decision to grant permission on the basis of an 8 metres wide road was taken into consideration. The view was taken, taking into consideration the view by this Court and all other planning parameters and site conditions. It is also pointed out that the authority had on an earlier occasion approved another project of Respondent Nos.6 and 7 just across the road on the basis of a 6 metres wide road. It is then set out that after the approval of the revised plans by the authority the O.D.P. has been finalised and approved by the Town and Country Planning Board and they are awaiting Government approval. The O.D.P now shows an 8 metres wide road. It is then reiterated that the plot of Respondent Nos.6 and 7 is a corner plot as defined in definition 46 of the Planning and Development Authority(Development Plan) Regulations, 1989. It is pointed out that in addition to the 8 metres road which is on the Northern side. On the Western side there is a 30 metres proposed road on the said plot. It was incumbent on the authorities to give the builder an advantage of the proposed road considering that the area falls under the proposed O.D.P. The other averments to the extent that they are contrary have been denied. In fact, the Petitioners themselves have filed a plan which shows the road on the Northern side and proposed road on the Western side.

8. It may be pointed out that on 12th June, 1997, this Court by Order of 12th June, 1997, directed the Planning Authority to prepare a location plan of the disputed road and to show the proposed outlines of 8 metres, 10 metres and 15 metres road if it is to be constructed. The ownership of the land of persons whose land would be affected was also to be shown. If portion is used as a road either as a pathway or cartway that was also to be shown. On 26th August, 1997, after hearing the parties statement made on behalf of Respondent No.4 by their Counsel was recorded, that Respondent Nos.6 and 7 will have to submit fresh proposals as earlier sanction was granted on the basis that the width of the road was 6 metres, whereas it should be 8 or 10 metres as per the Outline Development Plan. On behalf of Respondent Nos.6 and 7 a statement made by their learned Counsel was recorded that Respondent Nos.6 and 7 without prejudice would be submitting fresh plans for approval in accordance to the approval granted. Liberty was granted on both the counts.

On June 17, 1998, another Order came to be passed. By that Order, this Court permitted Respondent Nos.6 and 7 to carry out development activities pursuant to revised development plans/permission. This was to be at the cost and risk of Respondent Nos.6 and 7 and subject to decision of the Petition. Statement made on

behalf of Respondent Nos.6 and 7 that they shall not claim any equity in the Order passed was recorded.

9. A few additional facts may now be set out. The Government granted sanction for publication of notice of O.D.P by letter of 8th November, 1996. This was after the O.D.P prepared by the Respondent No.4 was approved by the State Government in terms of Section 34 of the Town and Country Planning Act with some modifications as set out therein. The authority was directed to take further necessary action to publish the notice of preparation of O.D.P under Section 35 of the Town and Country Planning Act. On 11th November, 1996, a letter was addressed to the Member Secretary of the fourth Respondent under powers vested under Section 102 and all the enabling powers by the Chief Town Planner, whereby the fourth Respondent was directed to follow the O.D.P of Margao Planning area prepared by the authority with modifications as made. A public notice inviting objections thereafter appeared in the Government Gazette dated 6th March, 1997. The Petitioner herein had also filed objections dated 3rd March,1997 which are at Exh.P-18 of the Petition. There was also a further representation by Respondent No.6 on 5th January, 1998. The earlier objections filed were on 14th February, 1997. On 20th February, 1997, Respondent No.6 was informed that the fourth Respondent has considered the matter and also

had discussed with the parties and considering the past existing development an 8 metres wide road shall be constructed. At a meeting of the authority held on 7th January, 1998 for reasons set out therein, it was resolved to consider the proposal and accord approval of an 8 metres wide road. It was further set out that the said right of way shall be incorporated in the O.D.P accordingly for final approval. At a meeting of the authority held on 13th May, 1999, it was further resolved that the road leading from K.T.C. stand to Margao and then connected to Colva road is reversed to 10 metres road way. The small stretch right of road connecting to the 15 metres right of way along the paddy field has been changed to 8 metres. On 19th May, 1999, the Member Secretary of the fourth Respondent wrote to the Chief Town Planner that a Sub-Committee appointed for considering suggestions on O.D.P for Margao Sub-Committee had submitted its report and that report was accepted with certain suggestions. The O.D.P had thus been modified by the authority. The modified plan was forwarded for necessary action under Section 35(6) of the Act. The Town and Country Planning Board considered the proposal, approved it and recommended the same to Government with certain modifications as set out in the letter of 27th March, 2000, addressed to the Member Secretary for information of the public. In the letter of 24th April, 2000, the Member Secretary wrote to the

Chief Town Planner, informing that the authority had decided to adopt and start implementing the O.D.P.

10. With the above, we may first deal with the contention whether Respondent No.4 could have granted permission for development of the plot by considering 8 metres road. The matter will have to be considered, based on the material on record. Admittedly at the time when the Petitioner applied for permission there was an Outline Development Plan in force. In terms of that Outline Development Plan, the width of the road in front of the property of the Respondents was 10 metres. A new Outline Development Plan(ODP) was proposed by the fourth Respondent. In terms of this O.D.P., the right of way was shown as a 15 metres wide road. This plan was forwarded to the Town and Country Planning Board which after considering the proposal of the fourth Respondent, referred the matter to the Government. On 8th November, 1996, after making some changes, the fourth Respondent was directed to take further necessary action to publish the notice of preparation of O.D.P. under Section 35 of the Town and Country Planning Act. Immediately thereafter, on 11th November, 1996, the Chief Town Planner and Joint Secretary to the Government in exercise of the powers conferred under Section 132 of the Act, directed the Planning Authority i.e. the fourth Respondent to follow the O.D.P. as prepared by them and

approved by the Government. Respondent No.4 brought this to the notice of the public within the planning area by informing that the proposals for development should be in terms of that O.D.P. which was proposed. On 17th January, 1997, objections were invited to the proposed O.D.P. by publication in Official Gazette. Respondent No.6 along with some others was one of the objectors to file the objection on 14th February, 1997. The Petitioner himself had also filed objections by letter dated 3rd March, 1997. From the record produced by the learned Advocate General and most specifically from the letter dated 19th May, 1995, addressed by the Member Secretary of fourth Respondent to the Chief Town Planner, a Sub-Committee had been appointed for considering the objections/suggestions. That Committee submitted its report to the Authority on 13th May, 1999. On 7th January, 1998, at a meeting of the fourth Respondent, the Authority resolved to consider the proposal and accord approval on the basis of 8 metres right of way road. In the very same Resolution, it was also set out that the said right of way shall be incorporated in the O.D.P. for final approval. On 13th May, 1999, at a meeting of the Authority, a further Resolution was passed wherein the suit road was changed to 8 metres from the earlier proposal of 15 metres. The reasons are reflected in the Resolution in the Minutes of the Meeting held on 17th January, 1988. The Authority after having considered the

objections/suggestions at the meeting held on 13th May, 1999, and after making the required alterations submitted the modified plan to the Chief Town Planner. The Town and Country Planning Board considered the plan as modified and recommended the same for approval to the Government after some modifications. It is not contended by any party that there is any change in the 8 metres road. The Authority itself on 24th April,2000, decided to adopt the O.D.P. as approved by the Town and Country Planning Board. More important the Chief Town Planner by letter of 27th March, 1998, approving the final O.D.P. sent the O.D.P. to the fourth Respondent for information of the public.

11. Any development within a planning area is subject to the provisions of the Town and Country Planning Act and Rules framed thereunder as also the Planning Authority(Development Regulations),1989. On the Act coming into force, the Government had to notify the planning areas and constitute Planning Authorities for the same. The Act is divided into various chapters. Under Chapter VI every authority constituted for the planning area and which is known as the Planning and Development Authority under Section 29 was dutybound to prepare the O.D.P. Section 30 sets out what has to be contained in the O.D.P. Under Section 34, it is set out therein that after the Outline Development Plan coming

into operation, the conversion shall be in conformity with the contents of the O.D.P. and according to such procedure as is prescribed. There are also other provisions, with which for the moment we are not concerned. The next relevant Section is Section 34 which provides that as soon as the Development Plan is submitted to the Government, the Government may direct the Planning and Development Authority to make such modifications in the Development Plan as it thinks fit and thereupon the Planning and Development Authority shall make such modifications. It is further provided that after the Government makes the modifications it must grant approval for notice to the public of the proposed Development Plan under Section 35. Under Section 35, the Planning Authority has to publish by Notification and also in the local newspapers, intimation of the preparation of Development Plan indicating therein the place where copies of the same may be inspected and inviting objections in writing to the Development Plan within such period as specified in the notice. It is under this Section that the public or the persons from the Planning area for the first time come to know of the zoning of their property in the O.D.P. and the road width etc. After objections have been received, the Planning Authority has to appoint a Committee to consider the objections received under Sub-Section(1) and to report within such time that the Planning Authority may

fix. The Committee after hearing the parties has to submit its report to the Authority which then has to consider the report and make such alterations and development in the Development Plan as it considers proper and submit the Development Plan together with a report of the Committee to the Town and Country Planning Board and to the Government. Under Section 36, the Government after consulting the Board and within such time and as soon as may be has to either approve the Development Plan or approve it, with such alterations or modifications as it may consider necessary or may return the Development Plan to the Planning Authority as set out under Section 36. Under Section 37, there are further requirements and as to when the development shall come into operation.

12. Chapter VII provides for Control of Development and Use of Land. Section 42 provides that on and from the date on which a public notice of the preparation of a Development Plan is published under Section 35 every land use, every change in the land use and every development in the area covered by the Development Plan shall conform to the provisions of the Act and the Development Plan as finally approved by the Government under Section 36. Section 44 provides for grant of permission. Under Sub-Section (4) while dealing with the applications for permission under this Section, the Planning Authority

shall have regard to (1) the provisions of any Development Plan which has come into operation. (2) the proposals or provisions which it thinks are likely to be made in any Development Plan under preparation or to be prepared. (3) to the relevant bye-laws or regulations of the local authority concerned and such other provisions and also any other material consideration. Under Section 132, the Planning and Development Authority shall carry out such directions as may be issued from time to time by the Government for the efficient administration of this Act.

13. The major contention as already noted on behalf of the Petitioners in both the Petitions is that the O.D.P. already in force for the Margao Planning area provided a road of 10 metres. The new O.D.P. as approved by the Government with directions to be published under Section 36, and which was prepared by the Planning Authority itself provided for an access of 15 metres. The fourth Respondent itself decided to follow that plan by intimating to those interested in development and having properties within the planning area by public notice. The Government had also issued direction under Section 132 to the fourth Respondent to follow the said plan and in these circumstances the fourth Respondent was dutybound to grant permission only in terms of the plan as provided by the Government under

Section 34 until such time the plan came into operation in terms of Section 37. If, this construction is adopted clearly the permission granted by the fourth Respondent would be contrary to the O.D.P.

The question, however, is as to how Section 44(4) has to be construed. Under Section 44(4)(ii), the Planning Authority apart from the provisions of any Development Plan which has come into operation has also to bear in mind the proposals or provisions which it thinks are likely to be made in any Development Plan under preparation. What has been notified in 1996 is the new proposed O.D.P. There was already an O.D.P. in force. Therefore, the fourth Respondent had to consider the provisions of Development Plan already in operation and the proposals or provisions which are likely to be made in Development Plan under consideration. The limited issue would be whether after the plan has been put up for public objections, and after objections had been filed and a Committee appointed as required and its report has been accepted by the Planning Authority and it accordingly modifies the plan, whether the Planning Authority can then grant a permission based on these modifications. The crux of the matter lies there. In the instant case, we have noted that objections were filed both by the Petitioner and the Respondent No.6 after the plan was published. This is for the first time

that both had an opportunity of filing their objections. Otherwise, it is the Authorities alone who prepare the plans for the locality in general without looking at specific or local conditions who are aware of the proposed O.D.P. until it is made open for objection. In the case before us, there were objections before the fourth Respondent. Those objections are on record. The Committee at its meeting on 17th January, 1998, granted approval for development and also noted that the right of way shall be incorporated in the O.D.P. The objections were filed in 1997. In other words, the 15 metres proposed road was now to be reduced to 8 metres. There is a further Resolution on 13th May, 1999, which discloses that the report of the Sub-Committee was considered as reflected in the letter of 19th May, 1999 and the O.D.P. modified. The O.D.P. as modified was forwarded to the Town and Country Planning Board which is one of the Authority to be consulted by the Government before final publication. The Town and Country Planning Board approved the plan and recommended the same to the Government with certain modifications. It is not the case of any party that in so far as the road in dispute is concerned, it is not accepted as an 8 metres road. From 2000 onwards, the plan is yet to be notified as required. Learned Advocate General has informed the Court that the plan would be notified within three months.

14. We are, therefore, in a situation where in the proposed Outline Development Plan when the Respondent No.6 applied for development, the proposed plan showed a 15 metres road. Petitioner filed objections that the 15 metres road was not feasible considering the constructions which had already come up. The Authority while granting permission for an 8 metres road in its meeting of 17th January, 1998, has noted as to why the road length has to be reduced to 8 metres considering the development already taken. This is not a main road. It is merely a small stretch of the road as noted from the Resolution of Respondent No.9. Considering Section 44(4), we are of the opinion that the Planning Authority is bound to take into consideration the proposed plan as modified. In the instant case, strictly speaking, unless the plan was modified to include an 8 metres road, permission could not have been granted until and unless the recommendations were submitted by the Sub-Committee and then approved by the Planning Authority. The record, however, shows that the objections have been considered and the Authority accordingly decided to change the road to 8 metres as can be seen in the letter addressed to the Chief Town Planner. What the Authority has done is to first grant permission and then to change the O.D.P. It really had to be the other way round. Thus, there has been a failure by the Respondent No.4 to act in conformity with the provisions of the law. The question,

however, is after the building has come up and considering the subsequent events namely that even the Town and Country Planning Board which is the Authority to be consulted by the Government before the final plans have been approved itself has modified the plan, whether the extra-ordinary jurisdiction of this Court should be invoked to grant any reliefs to the Petitioners. In our opinion, considering that the objections filed to the 15 metres road have been accepted and the plan modified this subsequent act of modification of plan, under the law has to be taken into consideration while granting permission. The Planning Authority had to bear in mind this aspect of the matter. It will be difficult for this Court in these circumstances to interfere with the approval as granted. It may be made clear that the Planning Authority cannot depart from the plan prepared but at the same time can consider changes proposed in the O.D.P. to be finalised. On the facts and circumstances of this case, as the Town and Country Planning Board has granted approval for the modified O.D.P. in our opinion, it would not be proper to exercise our extra-ordinary jurisidction on this count.

15. We then come to the second contention whether the plot is a corner plot. We have the Affidavit of Respondent No.4, where it is pointed out that apart from the road in dispute, there is a proposed road of 15

metres width. While granting permission, this road had to be taken into consideration. If that is considered then the plot constitutes a corner plot as set out in definition 46 of the Regulations, 1989. Apart from that, the traditional way of the Petitioner in Writ Petition No.133 of 1997 would also be a road. Once that be the position, it would be difficult to hold that the plot is not a corner plot.

16. It is no doubt true that various objections were filed contending that the exercise of charge in O.D.P. is mala fide. In our opinion, merely alleging that the decision is mala fide is not sufficient. Mala fide has to be proved. There are no material facts placed in support of the allegation. It is not possible to accept that the entire Planning Authority acted arbitrarily or in a mala fide manner. Merely because the Authority considering that the Petitioners and Respondents had plots in the same locality were trying to see whether the matter could be resolved cannot be the basis to hold that the action of Respondent No.4 is mala fide. Apart from that, on behalf of the Respondents, learned Advocate General has made a statement which we accept, that the plan would be notified within three months from today.

17. In the light of that, we find no merit in these

Petitions. Rule discharged however, with a direction that the plan approved by the Government be notified as required under Sections 36 and 37 within three months from today. In the circumstances, there shall be no order as to costs.

F. I. REBELLO, J.

P. V. HARDAS, J.

RD.